

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

CHARLES DRUME,	)	Case No.: 1:22-cv-00296-AWI-BAK (SKO) (HC)
	)	
Petitioner,	)	ORDER DISMISSING PETITION WITH LEAVE
	)	TO FILE A FIRST AMENDED PETITION
v.	)	
	)	
SUPERIOR COURT OF THE STATE OF	)	[THIRTY-DAY DEADLINE]
CALIFORNIA FOR THE COUNTY OF	)	
FRESNO,	)	
	)	
Respondent.	)	

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On February 21, 2022, Petitioner filed a Petition for Writ of Habeas Corpus in the Ninth Circuit Court of Appeals. (Doc. 1.) The Ninth Circuit transferred the petition to this Court on March 14, 2022. (Doc. 2.) A preliminary screening of the petition reveals that the petition fails to name the proper respondent, fails to present any cognizable grounds for relief or any facts in support, and fails to demonstrate exhaustion of state remedies. Therefore, the Court will DISMISS the petition with leave to file an amended petition.<sup>1</sup>

**I. DISCUSSION**

**A. Preliminary Review of Petition**

Rule 4 of the Rules Governing Section 2254 Cases requires the Court to make a preliminary

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<sup>1</sup> On March 22, 2022, Petitioner filed a motion for “second review.” (Doc. 6.) As the Court conducts a preliminary screening of each petition for writ of habeas corpus, the motion is denied as MOOT.

review of each petition for writ of habeas corpus. The Court must summarily dismiss a petition “[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court. . .” Rule 4; O’Bremski v. Maass, 915 F.2d 418, 420 (9th Cir. 1990). The Advisory Committee Notes to Rule 8 indicate that the Court may dismiss a petition for writ of habeas corpus, either on its own motion under Rule 4, pursuant to the respondent’s motion to dismiss, or after an answer to the petition has been filed.

B. Failure to Name a Proper Respondent

Petitioner names the Superior Court of the State of California for the County of Fresno as respondent. A petitioner seeking habeas corpus relief under 28 U.S.C. § 2254 must name the state officer having custody of him as the respondent to the petition. Rule 2(a) of the Rules Governing § 2254 Cases; Ortiz-Sandoval v. Gomez, 81 F.3d 891, 894 (9th Cir. 1996); Stanley v. California Supreme Court, 21 F.3d 359, 360 (9th Cir. 1994). Generally, the person having custody of an incarcerated petitioner is the warden of the prison in which the petitioner is incarcerated because the warden has “day-to-day control over” the petitioner. Brittingham v. United States, 982 F.2d 378, 379 (9th Cir. 1992); see also Stanley, 21 F.3d at 360. However, the chief officer in charge of state penal institutions is also appropriate. Ortiz, 81 F.3d at 894; Stanley, 21 F.3d at 360. Where a petitioner is on probation or parole, the proper respondent is his probation or parole officer and the official in charge of the parole or probation agency or state correctional agency. Id.

Petitioner’s failure to name a proper respondent requires dismissal of his habeas petition for lack of jurisdiction. Stanley, 21 F.3d at 360; Olson v. California Adult Auth., 423 F.2d 1326, 1326 (9th Cir. 1970); see also Billiteri v. United States Bd. Of Parole, 541 F.2d 938, 948 (2nd Cir. 1976). However, the Court will give Petitioner the opportunity to cure this defect by amending the petition to name a proper respondent, such as the warden of his facility. See West v. Louisiana, 478 F.2d 1026, 1029 (5th Cir. 1973), *vacated in part on other grounds*, 510 F.2d 363 (5th Cir. 1975) (en banc) (allowing petitioner to amend petition to name proper respondent); Ashley v. State of Washington, 394 F.2d 125 (9th Cir. 1968) (same). In any amended petition, Petitioner must name a proper respondent.

C. Failure to State a Cognizable Federal Claim

The basic scope of habeas corpus is prescribed by statute. Title 28 U.S.C. § 2254(a) states:

1 The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an  
2 application for a writ of habeas corpus in behalf of a person in custody pursuant to a  
3 judgment of a State court *only on the ground that he is in custody in violation of the*  
4 *Constitution or laws or treaties of the United States.*

5 (emphasis added). See also Rule 1 to the Rules Governing Section 2254 Cases in the United States  
6 District Court. The Supreme Court has held that “the essence of habeas corpus is an attack by a  
7 person in custody upon the legality of that custody . . .” Preiser v. Rodriguez, 411 U.S. 475, 484  
(1973).

8 To succeed in a petition pursuant to 28 U.S.C. § 2254, Petitioner must demonstrate that the  
9 adjudication of his claim in state court

10 (1) resulted in a decision that was contrary to, or involved an unreasonable application  
11 of, clearly established Federal law, as determined by the Supreme Court of the United  
12 States; or (2) resulted in a decision that was based on an unreasonable determination of  
13 the facts in light of the evidence presented in the State court proceeding.

14 28 U.S.C. § 2254(d)(1), (2). In addition to the above, Rule 2(c) of the Rules Governing Section 2254  
15 Cases requires that the petition:

- 16 (1) Specify all the grounds for relief available to the petitioner;  
17 (2) State the facts supporting each ground;  
18 (3) State the relief requested;  
19 (4) Be printed, typewritten, or legibly handwritten; and  
20 (5) Be signed under penalty of perjury by the petitioner or by a person authorized to sign it for  
21 the petitioner under 28 U.S.C. § 2242.

22 Petitioner has not complied with Rule 2(c) by failing to specify the grounds for relief or the  
23 facts supporting his claims. It appears Petitioner is attempting to raise various claims, such as for  
24 ineffective assistance of counsel, prosecutorial misconduct, negligence, and violation of the due  
25 process clause and confrontation clause. (See Doc. 1.) Rule 2(c) requires that each ground for relief  
26 be clearly stated, along with providing specific factual allegations that support the grounds for relief.  
27 O’Bremski v. Maass, 915 F.2d 418, 420 (9th Cir. 1990); United States v. Popoola, 881 F.2d 811, 812  
28 (9th Cir. 1989). Petitioner also fails to state how the adjudication of his claims in state court resulted  
in a decision that was contrary to, or an unreasonable application of, clearly established Supreme  
Court authority. Therefore, the petition fails to present a cognizable claim for relief and must be  
dismissed.

1            D. Exhaustion

2            A petitioner who is in state custody and wishes to collaterally challenge his conviction by a  
3 petition for writ of habeas corpus must exhaust state judicial remedies. 28 U.S.C. § 2254(b)(1). The  
4 exhaustion doctrine is based on comity to the state court and gives the state court the initial  
5 opportunity to correct the state's alleged constitutional deprivations. Coleman v. Thompson, 501 U.S.  
6 722, 731 (1991); Rose v. Lundy, 455 U.S. 509, 518 (1982).

7            A petitioner can satisfy the exhaustion requirement by providing the highest state court with a  
8 full and fair opportunity to consider each claim before presenting it to the federal court. Duncan v.  
9 Henry, 513 U.S. 364, 365 (1995). A federal court will find that the highest state court was given a full  
10 and fair opportunity to hear a claim if the petitioner has presented the highest state court with the  
11 claim's factual and legal basis. Duncan, 513 U.S. at 365 (legal basis); Kenney v. Tamayo-Reyes, 504  
12 U.S. 1, 112 S.Ct. 1715, 1719 (1992) (factual basis).

13            Petitioner fails to indicate for each of his claims whether he has previously raised the issues  
14 and provided the highest state court with a full and fair opportunity to consider the claims. If he has  
15 not done so, the Court must dismiss the petition. Raspberry v. Garcia, 448 F.3d 1150, 1154 (9th Cir.  
16 2006); Jiminez v. Rice, 276 F.3d 478, 481 (9th Cir. 2001). The Court cannot consider a petition that is  
17 entirely unexhausted. Rose, 455 U.S. at 521-22. If in fact Petitioner has fully exhausted his claims, he  
18 must so indicate in his amended petition.

19            Petitioner will be granted an opportunity to file a First Amended Petition curing these  
20 deficiencies. Petitioner is advised that he should caption his pleading, "First Amended Petition," and  
21 he should reference the instant case number.

22            **II. ORDER**

23            Based on the foregoing, the Court **ORDERS**:

- 24            1) The Petition for Writ of Habeas Corpus is DISMISSED WITHOUT PREJUDICE for  
25            failure to name a proper respondent, failure to state a claim, and failure to exhaust state  
26            remedies; and
- 27            2) Petitioner is GRANTED thirty days from the date of service of this order to file a First  
28            Amended Petition.

1           Petitioner is forewarned that his failure to comply with this Order may result in an Order of  
2 Dismissal or a Recommendation that the petition be dismissed pursuant to Local Rule 110.

3  
4 IT IS SO ORDERED.

5 Dated: May 12, 2022

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE